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SERVICE DATE – MARCH 19, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35068

SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY—
ACQUISITION AND OPERATION EXEMPTION—BNSF RAILWAY COMPANY

Decided: March 18, 2019

By decision served on September 7, 2007 (2007 Decision), the Board granted the petition of Soo Line Railroad Company d/b/a Canadian Pacific Railway (CP) and BNSF Railway Company (BNSF) for an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-25, for CP's acquisition and operation of BNSF's property interests in 35.26 miles of rail line that were jointly owned by CP and BNSF and a contiguous 9.96-mile rail line that was solely owned by BNSF.

On December 21, 2018, New Century Ag (NCA), a farmer-owned co-operative with grain elevator facilities located at Crosby and Noonan, N.D., filed a petition to reopen or, in the alternative, revoke the exemption.¹ NCA argues that, since 2014, CP has taken steps that have reduced competitive options by depriving NCA of access to BNSF rail service, contrary to BNSF's and CP's representations that granting the exemption would preserve competitive rail service. (Pet. 1, 8-11.)

On February 4, 2019, CP filed a reply in opposition to NCA's petition. On the same day BNSF filed a letter stating that it has not determined whether to support the remedies requested by NCA, but that it would not be opposed to Board-sponsored mediation in an effort to resolve the issues raised in NCA's petition. On February 21, 2019, NCA filed a petition to file rebuttal, which CP opposes.

NCA's petition raises issues that require further consideration by the Board. To allow the Board time to consider the revocation request, a proceeding will be instituted under 49 U.S.C. § 10502(d). The Board will address the filing of comments and replies in a separate decision.

¹ NCA filed supplements to its petition on January 28, 2019, and January 30, 2019.

It is ordered:

1. Under 49 U.S.C. § 10502(d), a proceeding is instituted.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.